

## FORM SUMMARY

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<b>Name of Form:</b>	<b>Original Adult Court Jurisdiction Order</b>
<b>Form Number:</b>	<b>CR-223</b>
<b>Statutory Reference:</b>	§938.183(1), §970.032(1), Wisconsin Statutes
<b>Benchbook Reference:</b>	CR 47-3
<b>Purpose of Form:</b>	Order on decision whether a defendant who is in adult criminal court under an "original adult court jurisdiction" crime should be "reverse waived" to juvenile court
<b>Who Completes It:</b>	Court
<b>Distribution of Form:</b>	Original to court, copies to district attorney, defendant, and defendant's attorney
<b>Accompanying Forms:</b>	Generally none.
<b>New Form/Modification:</b>	Modification; last update 7/96.
<b>Modifications:</b>	Added a file/date stamp area to upper left corner. Added a statement on the bottom indicating that the form shall not be modified.
<b>Comments:</b>	<p>The legislature has specified certain crimes or situations in which a person between the age of 10 through 16 automatically starts in adult court:</p> <ul style="list-style-type: none"><li>• Attempted 1st degree intentional homicide, §§939.32 &amp; 940.01</li><li>• 1st degree intentional homicide, §940.01</li><li>• 1st degree reckless homicide, §940.02</li><li>• 2nd degree intentional homicide, §940.05</li><li>• Battery by a prisoner after a prior delinquency adjudication, §940.20(1)</li><li>• Battery to probation/parole/aftercare agent, §940.20(2m)</li><li>• Assault by prisoner after prior delinquency adjudication, §946.43</li><li>• Any crime if the juvenile has been previously waived (under old ch. 48 or ch. 938) and has been convicted or the waived proceeding is still pending</li><li>• Any crime if the juvenile has been previously subject to original criminal court jurisdiction and has been convicted or that proceeding is still pending</li></ul>

In the following cases the juvenile is entitled to a decision by the

adult court whether the juvenile should be "reverse waived" to juvenile court:

- For those defendants who were 10 through 14 at the time of allegedly committing the following crimes:
  - Attempted 1st degree intentional homicide, §§939.32 & 940.01
  - 1st degree intentional homicide, §940.01
  - 1st degree reckless homicide, §940.02
  - 2nd degree intentional homicide, §940.05

Defendants who were 15 or 16 when those crimes occurred **must** remain in adult court.

- For those defendants who were 10 through 16 at the time of allegedly committing the following crimes:
  - Battery by a prisoner after a prior delinquency adjudication, §940.20(1)
  - Battery to probation/parole/aftercare agent, §940.20(2m)
  - Assault by prisoner after prior delinquency adjudication, §946.43
  - Any crime if the juvenile has been previously waived and has been convicted or the waived proceeding is still pending
  - Any crime if the juvenile has been previously subject to original adult court jurisdiction and has been convicted or that proceeding is still pending

If the defendant is charged with a felony, the court must first determine probable cause to believe the felony occurred. If probable cause is found, the court must then consider the reverse waiver criteria. If the defendant is charged with a misdemeanor, the juvenile may file a motion for reverse waiver at any time before trial.

In a felony case the court cannot order "reverse waiver" unless it finds all of the following are true:

- If convicted, the defendant could not receive adequate treatment in the criminal justice system; and,
- Transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense; and,
- Retaining jurisdiction in the criminal court is not necessary to deter the defendant or other children from committing the violation of which the defendant is accused.

In a misdemeanor case when a motion has been made, the court cannot order reverse waiver unless it finds:

- the defendant did not commit the violation under the circumstances described in §938.183(1)(b) or (c), whichever is applicable, or,

- that transfer would be appropriate after finding all the factors considered in a felony reverse waiver (see above) are met.

This form has been designed to accommodate either retention or transfer of the case. The specific charges and age groupings have been included as a checkbox in the findings to ensure that the decision is being made in the proper case. The order portion of the document provides checkboxes for the two choices and, in the case of a reverse waiver, the three factors are enumerated for guidance to the judge.

There may be some question why a form is needed when the court decides to retain jurisdiction any more than a form is needed for a finding of "probable cause" after a preliminary. RMC decided to insert the "retain jurisdiction" option so that an order can be signed in the event the defendant chooses to appeal the decision.

A question may arise as to the procedural placement of a case transferred to juvenile court. Ch. 938 is silent on whether it begins with a custody hearing under §938.21, an intake inquiry under §938.24, or the filing of a petition under §938.255. Past practice with the ch. 48 version of reverse waiver (allowed for in the case of a battery by an adjudicated delinquent in a secured correctional placement) was to begin with the filing of a petition. However, in each of those cases the juvenile was already in a secure custody placement so a §48.21 custody hearing was unnecessary. Under the new law, a juvenile may have been released on bond in the criminal court. In that case the criminal bond will terminate upon the transfer to juvenile court and a custody hearing under §938.21 may be needed. Each county may have to establish procedural rules to establish a practice as to where such a case starts in the juvenile system.

#### **About this form:**

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

**If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.**

If the court determines at a preliminary hearing that there is probable cause to believe the defendant committed the violation for which he or she is charged, the court must also make a determination whether the adult court should retain jurisdiction over the defendant or transfer the case to juvenile court (called "reverse waiver") in the following cases: